

KENT R. CUTLER
STEVEN J. SARBACKER
MICHAEL D. BORNITZ[‡]
TRENT A. SWANSON^{*}
RYAN J. TAYLOR^{*}
KIMBERLY R. WASSINK
MEREDITH A. MOORE
NATHAN S. SCHOEN^{**}
NICOLE J. MOHNING^X
DANIEL J. DOYLE
ALEX S. HALBACH^{*}
ERIC E. ERICKSON
JOSEPH P. HOGUE^{*}
JONATHAN A. HEBER
BRENDAN F. PONS
ERIK K. NYBERG
TRINETTE R. LAFLEUR^{*}
SAMUEL A. KRYSZEK^{*}
ERIC R. MATT^{**}
TANNER J. FITZ

CUTLER LAW FIRM, LLP
ATTORNEYS AT LAW

140 N. PHILLIPS AVENUE, 4TH FLOOR
POST OFFICE BOX 1400
SIOUX FALLS, SOUTH DAKOTA 57101-1400
TELEPHONE (605) 335-4950
www.cutlerlawfirm.com

October 18, 2019

RICHARD A. CUTLER
(1941-2019)

JEAN BROCKMUELLER, CPA (inactive)
BUSINESS MANAGER

^{*}Also licensed to practice
in Minnesota

^{**}Also licensed to practice
in Iowa

[‡]Also licensed to practice
in Nebraska

^XAlso licensed to practice
in Kansas

^{*}Also licensed as a Certified
Public Accountant (inactive)

^{**}Also licensed to practice
in North Dakota

Mayor's Office

VIA HAND DELIVERY AND U.S. MAIL

OCT 18 2019

SIOUX FALLS, SD

Mayor Paul TenHaken
224 West 9th Street
Sioux Falls, SD 57104

RE: Notice of Claim Pursuant to SDCL § 3-21-2

Occurrence: Approximately May 14, 2019

Owners: Earthbend Properties, LLC and Riverview Holdings, LLC

Property: Lot 2, Block 1A, Brown Drug Addition to the City of Sioux Falls,
Minnehaha County, South Dakota

Dear Mayor TenHaken:

Pursuant to the December 29, 2017 Temporary Construction Easement and related instruments entered into between the City of Sioux Falls (the "City") and the Owners, as identified above, the City agreed to cause a parking ramp and mixed-use structure to be constructed immediately west of the Owners' Property. The City's failure to cause the mixed-use portion of the project to be completed in a timely fashion is likely to lead to financial losses and other economic damages, including without limitation, lost or decreased rents and diminution of value to the Property. While SDCL § 3-21-2 does not apply to claims sounding in contract, the Owners may have additional claims against the City sounding in negligence or tort. Accordingly, pursuant to SDCL § 3-21-2, please consider this correspondence notice of a claim for damages to the Owners' Property, which was sustained as a result of the City's action or inaction that resulted in the termination of the contract(s) to build the mixed-use structure adjacent and west of the Property. The Owners are unaware of the exact date on which the contract or contracts were terminated; however, the Owners believe that the cause of the injury and related damage occurred on or about May 14, 2019, when the Owners became aware, through news media reports, that the City intended to terminate its relationship with the developer of the mixed-use structure.

The City's further actions in notifying the Owners' representatives, at a meeting on or about June 18, 2019, that tenants of the Property could begin parking in the parking ramp portion of the project around January 1, 2020, but then publicly announcing a delay in the ramp's

Page | 2
Mayor TenHaken
October 18, 2019

opening until the summer of 2020, without advance notice to the Owners, caused additional strain to the Owners' relationships with its tenants which could also result in additional financial loss and damages to the Owners.

To our knowledge, no affirmative steps have been taken by the City to fulfill its obligations under the Temporary Construction Easement and related instruments to cause the mixed-use structure to be developed on the adjacent property.

This correspondence is therefore intended to serve as notice to the City that claims may be brought against it for those items identified above, as well as others which may be identified in the future as relatable to the losses and associated damages described herein.

Sincerely,

CUTLER LAW FIRM, LLP



Trent A. Swanson
For the Firm

cc: Owners (via email only)




ANNUAL REPORT

Secretary of State
500 E. Capitol Ave
Pierre, SD 57501-5070
(605) 773-4845

2019
FILING YEAR

Domestic Limited Liability Company
SDCL 47-34A-211; 59-11-24, 24.1

Filing Fee: \$50

Please Type or Print Clearly In Ink
Please submit one Original
Make payable to the SECRETARY OF STATE

Total Fee: \$50

1. Business ID and Name:

DL032223
BUSINESS ID

EARTHBEND PROPERTIES, LLC
BUSINESS NAME

2. The jurisdiction under whose law it is formed **SOUTH DAKOTA**

3. The address of the principal executive office (business address):

Actual Street Address

Mailing Address

SIOUX FALLS, SD 57108-2615

SIOUX FALLS, SD 57108-2615

4. The South Dakota Registered Agent's Name:

South Dakota law permits the registered agent to be either (a) a noncommercial registered agent, or (b) a commercial registered agent.

(a) The South Dakota Noncommercial Registered Agent's name

Name **BRENT L BARGMANN**

Actual Street Address in this State

Mailing Address in this State

SIOUX FALLS, SD 57108-2615

5. If the LLC is manager-managed, list the names and addresses of its Managers. SDCL 59-11-24. If the LLC is member-managed, this section may be left blank.

6. Beneficial Owners (optional): A beneficial owner is a person who has or in some manner controls an equity security. Please consult an attorney for legal advice if you have any questions concerning this entry. Any question under this heading is considered a request for legal advice and the secretary of state's office is, by statute, not permitted, to provide legal advice.

No person may execute this report knowing it is false in any material respect. Any violation may be subject to a criminal penalty (SDCL 22-39-36).

03/26/2019

Dated

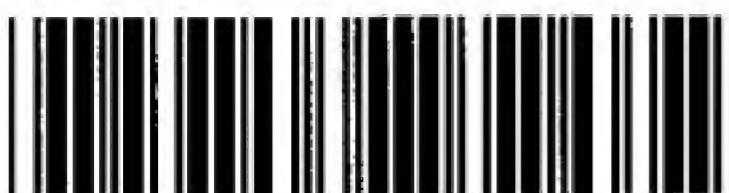
Email (Optional)

Brent Bargmann

Signature of an Authorized Person

Brent Bargmann

Printed Name



530671531

ANNUAL REPORT

Secretary of State
500 E. Capitol Ave
Pierre, SD 57501-5070
(605) 773-4845

2019
FILING YEAR

Domestic Limited Liability Company
SDCL 47-34A-211; 59-11-24, 24.1

Please Type or Print Clearly in Ink
Please submit one Original
Make payable to the SECRETARY OF STATE

Filing Fee: \$50

Total Fee: \$50

1. Business ID and Name:

DL003513
BUSINESS ID

RIVERVIEW HOLDINGS, LLC
BUSINESS NAME

2. The jurisdiction under whose law it is formed **SOUTH DAKOTA**

3. The address of the principal executive office (business address):

Actual Street Address

Mailing Address

SIOUX FALLS, SD 57105

SIOUX FALLS, SD 57105

4. The South Dakota Registered Agent's Name:

South Dakota law permits the registered agent to be either (a) a noncommercial registered agent, or (b) a commercial registered agent.

(a) The South Dakota Noncommercial Registered Agent's name

Name **KENNETH J KARELS**

Actual Street Address in this State

Mailing Address in this State

SIOUX FALLS, SD 57105

5. If the LLC is manager-managed, list the names and addresses of its Managers. SDCL 59-11-24. If the LLC is member-managed, this section may be left blank.

Name _____ Address _____

Ken Karels

Sioux Falls, SD 57105

6. Beneficial Owners (optional): A beneficial owner is a person who has or in some manner controls an equity security. Please consult an attorney for legal advice if you have any questions concerning this entry. Any question under this heading is considered a request for legal advice and the secretary of state's office is, by statute, not permitted, to provide legal advice.

No person may execute this report knowing it is false in any material respect. Any violation may be subject to a criminal penalty (SDCL 22-39-36).

11/02/2018

Dated

Email (Optional)

Ken Karels

Signature of an Authorized Person

Ken Karels

Printed Name